

### **REMARKS**

Applicants have studied the Final Office Action of April 30, 2007, and take this opportunity to present arguments in support of patentability. It is believed that upon objective review of the claims, and particularly analyzing this information at the time the invention was made, that it will be clear that the claims define over any fair teaching attributable to the prior art.

Applicants believe that this application is now in condition for allowance and early notice thereof is respectfully requested.

### **Claim Rejections – 35 USC § 103**

Claims 1, 5, 6, 9, and 14-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Evans (U.S. Patent No. 3,168,365) in view of Wise (U.S. Patent No. 2,911,275) and Vargo (U.S. Patent No. 4,553,725).

Applicants submit that the combination of Evans, Wise and Vargo fail to teach the limitations of amended claim 1. Claim 1, as amended, calls for a "...support member punched out of and extending from the first side wall such that a first opening is formed through the first side wall adjacent the first support member, wherein the first support member includes a planar first leg extending normal to the first side wall and a planar second leg extending perpendicular from the first leg spaced from and at least substantially parallel to the first side wall, the second leg includes a substantially hemispherical dimple formed in a straight portion of the second leg..." Independent claim 17 and claim 21 dependent thereon set forth similar aspects. Evans simply fails to teach or suggest the planar and perpendicular leg features of the subject claims.

Conversely, Evans teaches a hook structure 17 having a curvilinear or S-shaped portion. As shown in Figure 4 of Evans, the hook structure also includes a planar portion extending from the curvilinear portion for attaching the hook structure to a metal strip 18. As shown in Figure 12 of Evans, the curvilinear portion of the hook structure is struck from the rear wall 11. Applicants submit that the curvilinear portion of the Evans hook structure 17 fails to teach a planar first leg that is normal (e.g., orthogonal, perpendicular) to a first sidewall, and a planar second leg extending perpendicular from

the first leg that is parallel to the first side wall. The Examiner identifies the first and second "legs" of the hook structure in Figure 4 of Evans reproduced on page 6 of the Office Action. However, contrary to the Examiner's assertions, the lower curved portion of the hook structure 17 (letter "A") extends at approximately a 45 degree angle from the mounting strip 18 in which it is positioned, and the curvature of the hook structure (letters "B" and "C") does not extend perpendicular to the lower curved portion. Further, the second "leg" of the hook structure (identified as letters "B" and "C") is not planar.

The Examiner, in the Response to Arguments section of the Office Action, states that the hook member directly below the annotated hook member in Figure 4 shows a first "leg" extending normal from the mounting strip 18. Applicants respectfully disagree. Applicants submit that the hook member 17 of Evans is formed as a resilient member such that the curvilinear portion engages a flange of the shelf 20 thereby locking the shelf in its mounted position. Obviously, the curvilinear portion of the hook member 17 will be forced outwardly upon insertion of the shelf flange. Because the annotated hook member shows its intended shape, the deflected hook member does not meet the perpendicular leg feature of the subject claims. Further, the second "leg" of this deflected hook structure is also not planar.

Thus, Evans fails to teach or suggest the claimed aspect of a support member that includes a planar first leg extending normal to the first side wall and a planar second leg extending perpendicular from the first leg spaced from and at least substantially parallel to the first side wall as recited in the subject independent claims.

Wise and Vargo fail to overcome the deficiencies of Evans with regard to the subject independent claims. Specifically, neither Wise nor Vargo teaches or suggests a shelf support member consisting of a planar perpendicular first leg and a planar second leg extending perpendicular from the first leg and parallel to a cabinet wall over which a flange of a shelf fits to secure the shelf to the cabinet wall.

For at least the foregoing reasons, it is readily apparent that neither Evans nor Wise nor Vargo, alone or in combination, make obvious Applicants' invention as set forth in independent claims 1 and 17 (and claims 5, 6, 9, and 14-21, which depend

respectively therefrom). Thus, claim 1 and claims 5, 6, 9, 14-16 dependent thereon, and claim 17 and claims 18-21 dependent thereon, are in condition for allowance.

Regarding claims 15, 16, 19 and 20, the Examiner concedes that Evans does not disclose a support wall being connected to the base wall and shelf by lances (see Office Action, page 5). Applicants respectfully disagree with the Examiner that the use of lances for connecting the support wall would have been obvious in view of Evans. Applicants submit that Evans only teaches that its vertical divider section 45 is adapted to engage against the underside of the shelf 20 (col. 3, lines 15-16).

To support this conclusory statement, the Examiner simply asserts that because shelf 48 is connected to vertical divider section 45 by hooks 47 and to cabinet side wall 12 by similar hooks, one of ordinary skill would have recognized lances as a means for securing the divider section of Evans to shelf 20 and rear cabinet wall 11. However, the Examiner has not pointed to any suggestion, motivation, or incentive to use a lance connection to mount the divider section or identified a reason that would have prompted a person of ordinary skill to use a lance connection. The "fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness." MPEP §2143.01.

Applicant respectfully submits that such a conclusory statement is inappropriate to support an obviousness rejection without citing a prior art reference teaching a lance connection for mounting a divider section to a base wall and removable shelf. The Examiner must point to some concrete evidence in the record in support of these findings. It is therefore respectfully submitted that claims 15, 16, 19 and 20 define over Evans, whether Evans is considered on its own under §§102 or 103, or in combination with any of the remaining art of record.

**CONCLUSION**

Applicants respectfully submit that the present Amendment removes issue for appeal, or in some other way, requires only a cursory review by the Examiner. The claims as amended do not raise any issues with regard to new matter, do not present new issues requiring further search or consideration and/or place the application into better for appeal. Accordingly, the amendment should be entered and the application forwarded for issuance.

For the reasons detailed above, it is respectfully submitted that all claims remaining in the application are now in condition for allowance.

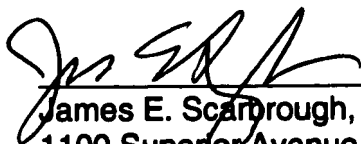
No additional fee is believed to be required for this Amendment. If, however, a fee is due, the Commissioner is authorized to charge our Deposit Account No. 06-0308.

In the event the Examiner believes a telephone call would expedite prosecution, she is invited to call the undersigned.

Respectfully submitted,

FAY SHARPE LLP

Date: 6/20/07



James E. Scarborough, Reg. No. 47,056  
1100 Superior Avenue  
Seventh Floor  
Cleveland, Ohio 44114-2579  
(216) 861-5582 (phone)  
(216) 241-1666 (facsimile)

CERTIFICATE OF MAILING OR TRANSMISSION	
I hereby certify that this correspondence (and any item referred to herein as being attached or enclosed) is (are) being	
<input checked="checked" type="checkbox"/>	deposited with the United States Postal Service as First Class Mail, addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.
<input type="checkbox"/>	transmitted to the USPTO by facsimile in accordance with 37 CFR 1.18 on the date indicated below.
Express Mail Label No.:	Signature: <i>Kara L. Krist</i>
Date: June 20, 2007	Name: Kara L. Krist

N:\METZ\200011\vas0000409V001.docx